

1 Anna Maria Martin (Bar No. 7079)

amartin@mmhllp.com

2 MESERVE MUMPER & HUGHES LLP

316 California Ave. #216

3 Reno, Nevada 89509

4 800 Wilshire Boulevard, Suite 500

5 Los Angeles, California 90017-2611

Telephone: (213) 620-0300

Facsimile: (213) 625-1930

6 Attorneys for Defendant

7 ROCKY MOUNTAIN HOSPITAL AND

MEDICAL SERVICE, INC. DBA ANTHEM

8 BLUE CROSS AND BLUE SHIELD erroneously

sued herein as BLUE CROSS OF COLORADO, a

9 business organization, form unknown

10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

13 LAS VEGAS REGIONAL SURGERY
14 CENTER, L.P., A Nevada Limited
Partnership,

15 Plaintiff,

16 vs.

17 BLUE CROSS OF COLORADO, a
18 business organization, form unknown, and
DOES 1 - 10,

19 Defendant.

} Case No.

} **NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C. §
1441(b) (DIVERSITY)**

} **[Clark County District Court Case
No. A-17-0765037-C]**

21 **TO THE DISTRICT COURT OF THE UNITED STATES, DISTRICT OF
22 NEVADA, AND TO PLAINTIFF AND ITS ATTORNEYS OF RECORD:**

23 PLEASE TAKE NOTICE that Defendant ROCKY MOUNTAIN HOSPITAL
24 AND MEDICAL SERVICE, INC. dba ANTHEM BLUE CROSS AND BLUE
25 SHIELD ("ROCKY MOUNTAIN"), erroneously sued herein as BLUE CROSS OF
26 COLORADO, a business organization, form unknown, hereby removes the above-
27 captioned civil action from the District Court of the State of Nevada for the County
28 of Clark to the United States District Court for the District of Nevada, based upon

1 diversity jurisdiction pursuant to 28 U.S.C. §§ 1332(a), 1332(c), and 1441.

2 This removal is based on the following grounds:

3 **I. TIMELINESS**

4 1. On November 21, 2017, Plaintiff Las Vegas Regional Surgery Center,
 5 L.P., a Nevada Limited Partnership (“Plaintiff”) commenced this action by filing a
 6 Complaint in the District Court of the State of Nevada for the County of Clark, Case
 7 No. A-17-0765037-C.

8 2. Plaintiff served a copy of the Summons and Complaint on ROCKY
 9 MOUNTAIN on December 20, 2017. True and correct copies of the Summons,
 10 Complaint, and all other process, pleadings, and orders served on ROCKY
 11 MOUNTAIN are attached hereto as Exhibit A.

12 3. ROCKY MOUNTAIN has not yet answered or otherwise responded to
 13 Plaintiff’s Complaint.

14 4. Removal is timely pursuant to 28 U.S.C. § 1446(b) because ROCKY
 15 MOUNTAIN has filed this Notice of Removal within 30 days of being served with
 16 the Summons and Complaint.

17 **II. JOINDER**

18 5. There are no defendants that are required to join in this removal. All
 19 other defendants are fictitiously named and need not be considered for purposes of
 20 removal. 28 U.S.C. § 1441(b)(1).

21 **III. JURISDICTION: DIVERSITY**

22 6. This Court has original jurisdiction over this action pursuant to
 23 28 U.S.C. § 1332 because it is a civil action between citizens of different states, and
 24 the amount in controversy exceeds \$75,000, exclusive of interest and costs. Thus,
 25 removal of this action is proper pursuant to 28 U.S.C. §§ 1332(a) and 1441(a).

26 **A. Citizenship of Plaintiff**

27 7. ROCKY MOUNTAIN is informed and believes, and on that basis
 28 alleges, that Plaintiff is a citizen of the State of Nevada.

1 **B. Citizenship of Defendant ROCKY MOUNTAIN**

2 8. ROCKY MOUNTAIN is, and at all times relevant herein was, a
 3 corporation duly organized and existing under the laws of the State of Colorado, with
 4 its principal place of business in Colorado. Therefore, ROCKY MOUNTAIN is a
 5 citizen of Colorado. 28 U.S.C. § 1332(c).

6 **C. Doe Defendants**

7 9. Does 1 through 10, named by Plaintiff as defendants in its Complaint,
 8 should be disregarded for the purposes of determining whether removal is proper on
 9 diversity grounds. 28 U.S.C. § 1441(b)(1) (“In determining whether a civil action is
 10 removable on the basis of jurisdiction under section 1332(a) of this title, the
 11 citizenship of defendants sued under fictitious names shall be disregarded.”).

12 **D. Amount in Controversy**

13 10. Plaintiff seeks recovery against ROCKY MOUNTAIN for, *inter alia*,
 14 medical and surgical services Plaintiff provided to insureds of ROCKY
 15 MOUNTAIN. Plaintiff alleges that its usual and customary charges for services have
 16 historically been in excess of 30% of the billed amounts. (Complaint, ¶ 5). Plaintiff
 17 alleges that it “submitted bills to defendants for all medical and surgical services
 18 during 2014 and 2015 and expected to be paid more than 30% of the amount of the
 19 bills. For 2014, Plaintiff’s billings amounted to \$6,839,898.76, and for 2015,
 20 Plaintiff’s billings amounted to \$8,153,201.40.” (Complaint, ¶ 6). Plaintiff further
 21 alleges that “[f]or 2014, defendants paid only \$830,683.84, which is 12.14% of total
 22 2014 billings. For 2015, defendants paid only \$539,392.23, which is 6.62% of total
 23 billings.” (Complaint, ¶ 6).

24 11. Plaintiff alleges that ROCKY MOUNTAIN breached the terms of their
 25 agreement by failing and/or refusing to pay the usual and customary rates for medical
 26 and surgical services during 2014 and 2015. (Complaint, ¶ 8).

27 12. The amount in controversy exceeds the \$75,000 jurisdiction threshold.
 28 28 U.S.C. § 1332(a). If Plaintiff is correct, at the very least it would be entitled to an

1 additional 17.86% in compensation for all 2014 billings and 23.38% in compensation
 2 for all 2015 billings. Those payments would be at least \$1,221,605.92 for 2014 and
 3 \$1,906,218.49 for 2015. Plaintiff contends that its usual and customary charges
 4 actually exceed 30% of amounts billed. As such the amount in controversy is likely
 5 even greater.

6 13. Separate from these contractual benefits, Plaintiff also seeks attorney
 7 fees, which may be counted towards the jurisdictional minimum. (Complaint, Prayer
 8 for Relief ¶¶ B). *See Haase v. Aerodynamics Inc.*, 2009 WL 3368519, at *3-5 (E.D.
 9 Cal. Oct. 19, 2009) (noting that claims for special and general damages, attorney
 10 fees, and punitive damages may be counted towards the jurisdictional minimum
 11 when such items are recoverable as a matter of state law.).

12 14. Given Plaintiff's allegations and the damages it seeks, the amount in
 13 controversy clearly exceeds the \$75,000 jurisdictional threshold, exclusive of
 14 interests and costs.

15
 16 **IV. NOTICE**

17 15. Proper notice will be given this date to Plaintiff herein through its
 18 counsel of record, and to the Clerk of the District Court for the State of Nevada,
 19 County of Clark. A true and correct copy of the Notice is attached hereto as Exhibit
 20 B, and by this reference incorporated as if set forth in full.

21 WHEREFORE, ROCKY MOUNTAIN prays that this matter pending in the
 22 District Court for Clark County, Nevada be removed to this Court.

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2 Dated: January 17, 2018
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Anna Maria Martin
MESERVE, MUMPER & HUGHES LLP
4

5 By: /s/ Anna Maria Martin
6

7 Anna Maria Martin
8 Attorneys for Defendant
9 ROCKY MOUNTAIN HOSPITAL
10 AND MEDICAL SERVICE, INC.
11 DBA ANTHEM BLUE CROSS
12 AND BLUE SHIELD
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